

REMARKS

This is in response to the rejection dated February 5, 2007.

Applicant has amended the claims and argument below is addressed to them as such.
Applicant submits an IDS to which reference is made below.

The rejection

The claims are rejected under 35 USC 102(b) based on the Kruger publication 2002/0044833. The rejection says "It appears that the characteristics such and length to width aspect ratio, the flexibility factor, and weight per foot would be covered by Kruger depending on the actual length of the chamber, since it also appears that the chambers may be made from similar materials. It also appears...that a single person is capable...to install the chambers in a trench."

Applicant agrees that storm water chambers can be used as leaching chambers and vice versa. However, that does not mean that Kruger anticipates the invention, as argued below. Applicant says more about the difference between the two kinds of chambers at the "Flexibility Factor" subtitle below.

The language of the rejection "It appears..." and "...it also appears..." is in contrast to "It shows..." etc. The requirement is that "...for anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention, either explicitly or impliedly." Respectfully, examiner has not met the requirements for a 35 USC 102 rejection, because to say the element appears to be present, rather than that it is present, does not give applicant good basis for arguing the rejection on its merits.

If examiner maintains the rejection on the present grounds, he is requested to specifically state the basis for the rejection, by stating where in Kruger is each elements of the claims. Applicants argue below why that is not possible, and each and every element of the claimed invention is not described or implicit in Kruger

Applicant agrees that storm water chambers can be used as leaching chambers and vice versa. However, that does not mean that Kruger anticipates the invention because as applicant argues below elements of the claimed invention are not present. Applicants touch on the interplay between leaching chambers and storm chambers below.

Method claims

With respect to the method claims, if the rejection is continued, applicant requests the examiner to state where in Kruger is found, as in the claim:

- (i) a trench which defines the path of a string of chamber and which has a width sufficient to receive only a single string of chambers connected end-to-end,
- (ii) removing a first chamber from a stack of nested chambers; placing the first chamber in said trench; removing a second chamber from the stack of nested chambers; engaging the first end of the second chamber with the second end of the first chamber by vertically angling the second chamber relative to the first chamber and then lowering the second end of the second chamber into the trench to thereby form said joint between said chambers; wherein the person doing the manual installing stands in the trench and manipulates the second chamber during the lowering step
- (iii) wherein the length of each chamber is at least 4 feet and not greater than 5.7 feet.
- (iv) wherein each chamber has a flexibility factor of greater than about 0.2 inch.

(For purposes of simplifying examination and proceeding to allowance or appeal, applicants admit that the step of (ii) is known for installing leaching chambers. However, with respect to claim 27, as related in the specification, it was previously necessary to have two installers remove a chamber from a stack, owing to their length, as described in the specification.)

In particular, elements i, iii and iv are not described explicitly or implicitly in Kruger publication.

The item (i) is addressed further below, and is not present.

The element (iii) is in claim 26 as stated above, a limitation on both the upper and lower range of the chamber. There is no upper limitation of 5.7 feet stated in Kruger and thus that element is not present.

Furthermore, with respect to element (iii): Kruger discloses a broad 2-10 feet, more preferably 4-8 ft range, more particularly 7.5 to 8 feet long chambers (paragraph 0028). Whereas, the claimed invention range is 4 to 5.7 feet. Applicant agrees the unexpected or surprising result cannot overcome a 35 USC 102 rejection, and no longer maintains any such argument. However, the guidance of MPEP 2131.04 (II) applies. The narrow claimed range is not disclosed with sufficient specificity. On the contrary, the specific range on Kruger, 7.5 to 8 feet, is not at all overlapped.

The element (iv), flexibility factor, is not a property that is mentioned in Kruger, so applicant submits the specific flexibility factor is an element not described, and thus there is no basis for rejection of a claim which includes such limitation.

Anticipation requires identity of invention. The claimed invention, as described in the appropriately construed claims, must be the same as that of the reference in order to anticipate. *Glavebel Societe Anyonyme v. Nothlake*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995).

Therefore the rejection of claim 26 as amended ought to not be maintained.

Flexibility Factor

With respect to claims 26 and 27, the flexibility of the chamber creates the problem which the invention solves, notwithstanding it is a benefit for prior art chambers which are not so flexible.

With respect to the rejection paragraph 2, and claims 26 and 31, as recited in the specification the flexibility factor is measured on any chamber by setting the chamber on beams 3 feet apart with the center of the chamber in the middle of the span. Therefore flexibility factor is not dependent on chamber length. If a substantially unperforated sidewall of any chamber, including a Kruger type chamber, is made to have a multiplicity of slots, that substantially lowers the stiffness of the wall and a chamber and creates flexibility problems not otherwise present.

Further with respect to paragraph 2 and the dependent claims 32, 33, which relate to weight per unit length, aspect ratio, etc. As the related and incorporated by reference application, SN 10/677,938 (referred to on page 9) those are novel features of the new shape chamber there-described, which is an embodiment of the present invention, and those limitations provide additive novelty in combination with the subject matter of the intervening claims. .

Claims 29 and 31 ought to at least be allowed as particular embodiments of a patentable invention.

Does Kruger describe a trench?

With respect to whether Kruger describes a single chamber width trench, as such is described and claimed by applicant in claim 26 (and which referred to as element (i) above):

As previously submitted by, a trench, known in the art and defined in dictionaries, is a long narrow slit in the soil. As described in the specification and known in the art, leaching chambers are commonly installed by digging a trench in soil, and placing the chambers in the trench, and then backfilling the soil.

The rejection asserts at paragraph 2 that accord with Kruger the hole of Kruger would be a trench if Kruger chambers were placed in a single-chamber-width trench. However, the storm chamber literature shows that is not how they are used.

Applicant submits herewith an IDS with art which illustrates the nature of the art which is relevant to the Kruger publication. Please read the points made in the IDS about what the documents show. "...references may be used to interpret an allegedly anticipating reference and shed light on what it would have meant to those skilled in the art at the time of the invention. *Studiengesellschaft Kohle vs. Dart*, 220 USPQ 841, 842 (Fed Cir. 1984) quote in *Continental Can vs. Monsanto* 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

Kruger chambers are in fact not placed single file in trenches, and it would be necessary for examiner to find that, not just surmise it as a possibility, to support a 35 USC 102(b) rejection.